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Monday, June 5, 2000

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UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

LIONEL and DONNA MARIE STANDRIDGE,

No. 99-12671

[Debtor](#)  (s).

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JEFFRY G. LOCKE, [Trustee](#) ,

[Plaintiff](#)  (s),

v.

A.P. No. 99-1241

LIONEL and DONNA MARIE STANDRIDGE,

[Defendant](#)  (s).

_____/

Memorandum of Decision

In 1998, debtors and defendants Lionel and Donna Marie Standridge applied for a business loan from the City of Lakeport to expand their day-care business. The loan was funded in early February, 1999, for \$37,000.00. It was secured by a deed of trust to the Standridges' home, plus the assets of the business. Shortly after the Standridges received the loan, things began to go very bad for them. An investigation of their business was triggered by a former employee and resulted in the loss of contract and grant money. Mrs. Standridge, who has breast cancer, began to have other health problems as well. In May, 1999, they consulted a bankruptcy attorney. The attorney told the Standridges that they could lawfully purchase and declare exempt a new residence. Accordingly, they sold some of their personal property and, together with the remaining balance of the loan proceeds, purchased a used mobile home in Southern California for \$49,000.00. They filed their [Chapter 7](#) [bankruptcy petition](#) on August 25, 1999. In this [adversary proceeding](#), trustee Jeffry Locke alleges that the Standridges should be denied a [discharge](#). The trustee's case is based on the theory that the Standridges' purchase of the mobile home was pursuant to a fraudulent scheme whereby the Standridges tricked the City of Lakeport into making the loan to them, intending all along to purchase a mobile home with the proceeds.⁽¹⁾ The trustee contends that their discharge should be denied pursuant to § 727(a)(2) of the [Bankruptcy Code](#). The court finds these allegations to be utterly and completely without merit.⁽²⁾ Included in the voluminous loan documentation is a provision which, according to the trustee, restricts the use of the loan proceeds to business matters. Assuming this is true, the un rebutted and credible testimony of both debtors was that they believed that they could use the loan proceeds for any purpose. At most, the trustee has demonstrated breach of contract. There is absolutely no evidence of any fraudulent intent, let alone the intent sufficient to deny a discharge. The Standridges applied for the loan and received the loan proceeds in good faith, fully intending to continue operation of a successful business. A few months after they received the loan, they suffered reversals and health problems which resulted in business failure. The argument that the Standridges intended all along to defraud the City of Lakeport is completely unsubstantiated and false. The advice that the Standridges received from the bankruptcy attorney was proper and consistent with the current state of the law. The City of Lakeport had taken a deed of trust to their Lakeport home, reducing or eliminating their equity in that property. The Standridges were within their rights in purchasing a modest new dwelling on the eve of bankruptcy. In any event, their reliance on the advice of counsel negates any finding of fraudulent intent. *In re Adeeb*, 787 F.2d 1339, 1343 (9th Cir. 1986). For the foregoing reasons, the trustee will take nothing by his complaint and this adversary proceeding will be dismissed, with prejudice. The Standridges shall recover their costs of suit. This memorandum constitutes the court's findings and conclusions pursuant to FRCP 52(a) and FRBP 7052. Counsel for the Standridges shall submit an appropriate form of judgment forthwith.

Dated: June 5, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)

1. The City of Lakeport did not file a complaint to determine the dischargeability of its claims.

2. The court notes that the trustee never even deposed the Standridges before prosecuting this act

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